

Consumer and Human Resources Committee 1

Amendment No. 1 to HB0073

**Eldridge
Signature of Sponsor**

AMEND Senate Bill No. 83*

House Bill No. 73

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 47-18-201, is amended by adding the following as a new, appropriately designated subdivision:

() "Commissioner" means the commissioner of commerce and insurance;

SECTION 2. Tennessee Code Annotated, Section 47-18-202, is amended by deleting the language "division of consumer affairs in the department of commerce and insurance", the language "division of consumer affairs", and the language "division" wherever that language appears in subsections (a)–(c) and substituting instead the word "commissioner".

SECTION 3. Tennessee Code Annotated, Section 47-18-202(b)(1), is amended by deleting the subdivision and substituting instead the following:

(b)

(1) Except as provided in subsection (d), each operator shall, at the time of registration, file and have approved by the commissioner, a bond in which the candidate for registration shall be the principal obligor in an amount as determined by the commissioner; provided, however, that if no amount has been set by rule, then the amount of the bond shall be ten thousand dollars (\$10,000).

SECTION 4. Tennessee Code Annotated, Section 47-18-202(c)(1), is amended by deleting the subdivision and substituting instead the following language:

(c)

(1) Except as provided in subsection (d), each operator shall, at the time of registration, submit a nonrefundable registration fee in an amount set by the

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commissioner; provided, however, that if no amount has been set by rule, then the registration fee shall be fifty dollars (\$50.00).

SECTION 5. Tennessee Code Annotated, Section 47-18-202(c)(3), is amended by deleting the subdivision and substituting instead the following language:

(c)

(3) Such an annual renewal shall be accompanied by a nonrefundable renewal fee in an amount set by the commissioner; provided, however, that if no amount has been set by rule, then the renewal fee shall be fifty dollars (\$50.00).

SECTION 6. Tennessee Code Annotated, Section 47-18-204, is amended by deleting the section and substituting instead the following language:

(a) The commissioner may deny, suspend, or revoke a registration for:

(1) A violation of this part or any rules promulgated pursuant to this part;

or

(2) The making of a false statement on the registration application form.

(b) The commissioner may adopt rules to administer this part. The rules shall be adopted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 7. Tennessee Code Annotated, Section 47-18-207, is amended by deleting the section and substituting instead the following language:

The commissioner shall notify the department of revenue within three (3) working days of any operator whose registration form does not include the operator's exemption certificate number or the operator's sales tax registration number as required by § 47-18-202(a)(2)(E).

SECTION 8. Tennessee Code Annotated, Section 47-18-208, is amended by deleting the section and substituting instead the following language:

The registration of beauty pageant operators by the division of consumer affairs in the department of commerce and insurance prior to July 1, 2015, shall be transferred to, and be administered by, the division of regulatory boards in the department of commerce and insurance on and after July 1, 2015.

SECTION 9. Tennessee Code Annotated, Section 47-18-209, is amended by deleting the section and substituting instead the following language:

(a) A violation of any of this part relative to beauty pageants, or rules promulgated pursuant this part, constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act of 1977, any violation of this part, or rules promulgated pursuant to this part, shall constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by the act.

SECTION 10. Tennessee Code Annotated, Section 47-18-210, is amended by deleting the section and substituting instead the following language:

Whenever it appears to the commissioner that an operator is acting in violation of this part, and the commissioner determines that the public health, safety, or welfare is endangered, the commissioner may issue an order to that operator to cease and desist in the violations, without prior notice. The operator shall be afforded an opportunity for a hearing within seven (7) business days to show cause why the order should be lifted, rescinded, or modified.

SECTION 11. Tennessee Code Annotated, Section 47-18-301, is amended by deleting subdivision (3) and renumbering the remaining subdivisions accordingly.

SECTION 12. Tennessee Code Annotated, Section 47-18-305, is amended by deleting subsection (b) and substituting instead the following language:

(b)

(1) A health club shall not enter into or offer to enter into a health club agreement unless the health club is fully operational and available to use by prospective buyers. The commissioner shall, upon application by a health club operator, certify that a health club facility is fully operational if all of the promised equipment and services are available for use by prospective buyers. No payment or promise to pay by a prospective buyer may be accepted by any health club operator unless and until the health club facility has been certified by the commissioner to be fully operational as described in this part.

(2)

(A) This subsection (b) shall not apply to any health club that has maintained a satisfactory registration with the commissioner for five (5) consecutive years; provided, that those health clubs notify the commissioner by certified mail of their intent to enter into agreements for a location not fully operational as otherwise required by this subsection (b).

(B) A health club's maintenance of satisfactory registration with the consumer affairs division of the department of commerce and insurance prior to July 1, 2015, shall satisfy the requirement for maintenance of satisfactory registration with the commissioner in subdivision (b)(2)(A), if:

(i) The health club maintained satisfactory registration with the division for five (5) consecutive years prior to July 1, 2015; or

(ii) The health club maintained satisfactory registration with the division for a period of time that was less than five (5) years immediately preceding a period of time that the health club maintained satisfactory registration with the commissioner, which,

when both periods of time are added together, total five (5) consecutive years.

(C) In order to be eligible to use this exemption, an operator shall use the same identification as described in any existing facility registration information as well as use the same federal and state tax accounts for payments of any related taxes due to this extension of operations.

SECTION 13. Tennessee Code Annotated, Section 47-18-305, is further amended by deleting subsection (e) and substituting instead the following language:

(e)

(1) Notwithstanding this part or any rules promulgated pursuant to this part to the contrary, a health club may enter into or offer to enter into a health club agreement with, or accept payment or a promise of payment from, a prospective buyer prior to certification by the commissioner of its facility as fully operational as set forth in subsection (b); provided, that the health club has:

(A) Acquired a property right or interest in this state with respect to the facility;

(B) Filed a registration application with the commissioner as required by § 47-18-309; and

(C) Purchased from a surety company authorized to do business in this state a surety bond in favor of the state of Tennessee in the amount of twenty-five thousand dollars (\$25,000).

(2)

(A) If the commissioner determines, based on the financial statement required by § 47-18-309(a)(3), that the financial condition of the health club is insufficient to protect prospective buyers, then the commissioner may require that the health club post a surety bond in an amount greater than twenty-five thousand dollars (\$25,000), but not to

exceed two hundred thousand dollars (\$200,000). The health club shall file a copy of the bond with the commissioner.

(B) A buyer who suffers loss of payments made to a health club prior to certification due to the health club's failure to open the facility may recover the amount of the payments from the surety; provided, that the liability of the surety may not exceed the aggregate amount of the bond regardless of the number or amount of claims filed with the surety.

(C) Upon certification by the commissioner that the health club is fully operational, the health club may cancel the surety bond upon thirty (30) days written notice of cancellation from the surety to the commissioner.

SECTION 14. Tennessee Code Annotated, Section 47-18-309, is amended by deleting the word "division" wherever it appears in the section and substituting instead the word "commissioner".

SECTION 15. Tennessee Code Annotated, Section 47-18-309(a), is amended by deleting the subsection and substituting instead the following language:

(a) An application for a certificate of registration, which shall contain such information as the commissioner may require, shall be submitted on forms furnished by the commissioner and shall be accompanied by:

(1) A registration fee per location in an amount as set by the commissioner; provided, however, that if no amount has been set by rule, then the fee shall be two hundred fifty dollars (\$250) per location;

(2) Copies of all membership and health club agreements offered by the health club; and

(3) A current personal or corporate financial statement prepared by a certified public accountant.

SECTION 16. Tennessee Code Annotated, Section 47-18-310, is amended by deleting the section and substituting instead the following language:

(a) A certificate of registration shall be valid for one (1) year from the date of issuance and shall be invalid upon expiration until it is renewed.

(b) Application for renewal of a certificate of registration, which shall contain such information as the commissioner may require, shall be submitted to the commissioner before the expiration date on forms furnished by the commissioner, and shall be accompanied by:

(1) A fee per location in an amount as set by the commissioner; provided, however, that if no amount has been set by rule, then the fee shall be one hundred fifty dollars (\$150) per location; and

(2) Copies of all membership and health club agreements offered by the health club.

(c) Certificates of registration shall be subject to late renewal for thirty (30) days following their expiration date by payment of the prescribed fee in addition to a penalty fee as set by the commissioner; provided, however, that if no amount has been set by rule, then the penalty fee shall be fifty dollars (\$50.00).

(d) No renewal application will be accepted more than thirty (30) days from its expiration.

(e) Upon compliance with this part by an applicant, the commissioner shall renew a certificate of registration.

SECTION 17. Tennessee Code Annotated, Section 47-18-313, is amended by deleting the word "division" wherever it appears and substituting instead the word "commissioner".

SECTION 18. Tennessee Code Annotated, Section 47-18-314, is amended by deleting the section and substituting instead the following language:

(a) It is unlawful to accept a down payment for a health club agreement in excess of thirty percent (30%) of the total cost of the agreement without a valid certificate of exemption.

(b) Each holder of a certificate of exemption shall display the certificate in a conspicuous place at each location where health club services or facilities are provided.

(c) Certificates of exemption shall be valid for one (1) year from the date of issuance.

(d) Application for renewal of a certificate of exemption shall be submitted before the expiration date on forms furnished by the commissioner, and shall contain a sworn certification by the holder that the requirements for exemption continue to be met, and that the holder is in full compliance with this part.

(e) In the event a holder of a certificate of exemption ceases to meet the requirements for exemption, then the certificate of exemption shall be invalid.

(f) Within ten (10) days after any change in the information contained in the original application or the application for renewal, each holder of a certificate of exemption shall notify the commissioner of the change by registered or certified mail.

(g) An application for exemption shall be submitted on forms furnished by the commissioner and shall be accompanied by:

(1) A nonrefundable application fee in an amount as set by the commissioner; provided, however, that if no amount has been set by rule, then the fee shall be fifty dollars (\$50.00); and

(2) A current personal or corporate financial statement prepared by a public accountant who holds a valid permit to practice in this state.

(h) A certificate of exemption shall be granted; provided, that the application provides proof satisfactory to the commissioner that the following criteria are met:

(1) The applicant has a net worth in excess of two hundred fifty thousand dollars (\$250,000) per location where health club services or facilities are provided; and

(2) The applicant has operated under substantially the same ownership and control for at least five (5) years.

(i) For the purpose of calculating net worth as provided in subsection (h), the following are excluded:

(1) Assets which represent prepayment for future services; and

(2) Accounts receivable due from health club members for future services.

(j) Any health club which had applied for and obtained an exemption from the bond requirement under prior law shall be exempt from the provisions of this part that prohibit acceptance of a down payment for a health club agreement in an amount in excess of thirty percent (30%) of the total cost of the agreement. The exemption established by this subsection (j) shall be valid only as long as the health club operates under the same or substantially the same ownership and control that existed when the exemption was granted under prior law.

SECTION 19. Tennessee Code Annotated, Section 47-18-315(a), is amended by deleting the subsection and substituting instead the following language:

(a) Notwithstanding any provision of this chapter to the contrary, the commissioner, or the commissioner's designee, may refuse to issue, suspend, revoke, or refuse to renew any registration pursuant to this part for a violation of this part or the rules promulgated pursuant to this part.

SECTION 20. Tennessee Code Annotated, Section 47-18-318, is amended by deleting the section and substituting instead the following language:

(a)

(1) In order to provide a degree of protection to members of health clubs, each health club shall post a bond in an amount as determined by the commissioner for each location conducting business in this state. The bond shall be made with a bond issued by a corporate surety acceptable to the commissioner.

(2) If the commissioner has not promulgated a rule setting the required level of bonding, then the bond shall be in the amount of twenty-five thousand dollars (\$25,000) for each location doing business in this state.

(b) The bond shall be maintained for two (2) years following the date on which the health club location ceases to conduct business in this state.

(c) In an action brought by the attorney general and reporter pursuant to part 1 of this chapter, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the health club be awarded to the state for consumer restitution. Any person who has entered a health club agreement that is not fulfilled by the operator may make a claim against the bond.

(d) This section shall not apply to any health club or health club operator that has, for at least seven (7) consecutive years, operated under substantially the same ownership and control and maintained a satisfactory registration with the department of commerce and insurance.

(e)

(1) In lieu of the surety bond required in this section, a health club may file with the department of commerce and insurance a current audited financial statement prepared by a certified public accountant licensed in this state that demonstrates to the department that either the health club or the health club operator has a financial net worth of at least ten million dollars (\$10,000,000) available to satisfy any claims imposed by the department.

(2) Any health club that files an audited financial statement in lieu of posting the surety bond required by this section shall annually file an updated audited financial statement that complies with subdivision (e)(1). Within thirty (30) calendar days of receiving information that would render the health club ineligible for exemption from the surety bond requirement under this subsection (e), the health club or the health club operator shall notify the department of commerce and insurance of the change in the health club's financial status and post the required surety bond with the department.

SECTION 21. Tennessee Code Annotated, Title 47, Chapter 18, Part 3, is amended by adding the following language as a new, appropriately designated section:

The registration of health clubs shall be transferred to, and be administered by, the division of regulatory boards in the department of commerce and insurance on and after July 1, 2015.

SECTION 22. Tennessee Code Annotated, Section 47-18-1002, is amended by adding the following as a new, appropriately designated subdivision:

() "Commissioner" means the commissioner of commerce and insurance;

SECTION 23. Tennessee Code Annotated, Section 47-18-1011, is amended by deleting the section and substituting instead the following language:

(a)

(1) In order to provide a degree of protection to customers of credit services businesses, each credit services business shall post a bond in an amount as determined by the commissioner with the department of commerce and insurance for each location conducting business in this state. The bond shall be made with a bond issued by a corporate surety acceptable to the commissioner.

(2) If the commissioner has not promulgated a rule setting the required level of bonding, then the bond shall be in the amount of one hundred thousand dollars (\$100,000).

(b) The bond shall be maintained for two (2) years following the date on which the credit services business ceases to conduct business in this state.

(c) In an action brought by the attorney general and reporter pursuant to § 47-18-1010, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the credit services business be awarded to the state for consumer restitution or civil penalties. Further, any person who has been awarded damages for a private action under this part may make a claim against the bond.

(d) Notwithstanding subsection (a), any credit services business that was registered with the division of consumer affairs in the department of commerce and insurance on or before May 1, 1998, shall only be required to post a bond in the amount of ten thousand dollars (\$10,000) with the department. The bond may be made through a deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner.

(e) Receipt of bonds for credit services businesses posted under this part shall be transferred to the division of regulatory boards in the department of commerce and insurance on and after July 1, 2015.

(f) The commissioner may prescribe fees for the filing of a bond with the department of commerce and insurance pursuant to this part. The fees shall be in an amount that provides for the cost of administering the receipt of bonds for credit services businesses. Fees may be adjusted as necessary to provide that the administration of bonds for credit services businesses is fiscally self-sufficient and that revenues from fees do not exceed necessary and required expenditures.

SECTION 24. Tennessee Code Annotated, Section 47-18-5506(14), is amended by deleting the subdivision in its entirety and substituting instead the following language:

(14)

(a) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check conducted by the federal bureau of investigation (FBI) or the Tennessee bureau of investigation (TBI), covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by § 47-18-5522.

(b) The applicant shall obtain electronically-scanned fingerprints placed on standard FBI or TBI applicant cards through a company that has contracted with the state to provide a fingerprinting service; provided, however, that the administrator may allow the applicant to instead provide the administrator with three (3) sets of classifiable fingerprints on standard FBI or TBI applicant cards for processing by the FBI or TBI for good cause.

(c) In the event the state no longer contracts with any company to provide an electronic fingerprinting service, the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards to be processed at the applicant's expense.

SECTION 25. Tennessee Code Annotated, Section 47-18-5509(c) is amended by deleting the subsection and substituting instead the following language:

(c) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime or suffered a civil judgment involving dishonesty, or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others;

(4) The application is not accompanied by the fee established by the administrator;

(5) The administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part;

(6) The applicant or any of its officers, directors, or owners has violated this part or any rule promulgated pursuant to this part; or

(7) The applicant or any of its officers, directors, or owners has engaged in any act or violation for which the administrator could suspend or revoke a registration under this part.

SECTION 26. Tennessee Code Annotated, Section 47-18-5510(b), is amended by deleting the subsection and substituting instead the following language:

(b) If the administrator does not act on an application within the time prescribed in subsection (a), the applicant may appeal and request a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

SECTION 27. Tennessee Code Annotated, Section 47-18-5511(b)(1), is amended by deleting the phrase “no fewer than thirty (30) and”.

SECTION 28. Tennessee Code Annotated, Section 47-18-5533(a)(3), is amended by deleting the subdivision and substituting instead the following language:

(a)

(3) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), imposing on a provider or a person who has caused a violation a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this part or any rule promulgated pursuant to this part;

SECTION 29. Tennessee Code Annotated, Section 47-18-5537(a), is amended by deleting the subsection and substituting instead the following language:

(a) An action or proceeding brought pursuant to § 47-18-5533(a), (b), or (c) shall be commenced within four (4) years after the administrator opens a complaint.

SECTION 30. Tennessee Code Annotated, Title 47, Chapter 18, Part 55, is amended by adding the following language as a new, appropriately designated section:

Beginning on July 1, 2015, administration of the Uniform Debt-Management Services Act on behalf of the administrator shall be attached to the division of regulatory boards in the department of commerce and insurance.

SECTION 31. For the purpose of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it.